

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LINEAR TECHNOLOGY CORPORATION,)	
)	
Plaintiff,)	
)	C.A. No. 06-476 (GMS)
v.)	
)	Confidential Version Filed: May 1, 2008
MONOLITHIC POWER SYSTEMS, INC.,)	
)	Public Version Filed: May 8, 2008
Defendant.)	
)	

**LINEAR'S ANSWERING BRIEF IN OPPOSITION
TO MONOLITHIC'S MOTION *IN LIMINE* NO. 4 TO
PRECLUDE EVIDENCE OF USE OF THE MP1543 BY CUSTOMERS**

In the guise of a motion *in limine*, Monolithic in effect seeks summary judgment of non-infringement based on its contention that there is insufficient evidence of direct infringement by others. This motion is procedurally improper and wrong on the substance. First, infringement by others need not be shown because Monolithic itself directly infringes. Second, it is well established that direct infringement by others can be proven by circumstantial evidence. Although Monolithic can argue lack of proof at trial, there is no basis for it to seek entry of judgment in its favor, particularly when it failed to even raise this issue at the summary judgment stage of the proceedings. (*See* D.I. 92).

Monolithic's assertion that it does not directly infringe the patents-in-suit is incorrect. (Mot. at 1-2). Monolithic has directly infringed by preparing the MP1543 product for the commercial market, for example, REDACTED

In addition, Monolithic has induced and contributed to direct infringement by others (*e.g.*, its customers). Linear has presented ample evidence of both direct and indirect infringement by Monolithic.

I. ARGUMENT

A. Direct Infringement

When the MP1543 is combined (as is intended by Monolithic) with off-the-shelf components such as a capacitor and voltage divider resistors, that combination constitutes an infringing switching voltage regulator. Shown below, from the cover page of the MP1543 datasheet,

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See Declaration of James W. Parrett, Jr. ("Parrett Decl."), Ex. H, MPS_DEL_0002886.

Monolithic itself has REDACTED

See Parrett

Decl., Ex. F, Chen Dep.¹ at 32:22-34:21 and 49:9-19. Monolithic also REDACTED

REDACTED

¹ Wei Chen, Monolithic's Vice President of Systems and Application Engineering, was the Rule 30(b)(6) witness on various topics including the structure, operation, testing, and marketing of the MP1543.

See id. at 56:17-57:1 and 57:22-58:6.

REDACTED

constitutes

direct infringement by Monolithic.

B. Indirect Infringement

The MP1543 product datasheet makes plain to users how to assemble the claimed switching voltage regulator using such off-the-shelf components. Monolithic has indirectly infringed by REDACTED,² which instructs customers how to assemble and use the infringing combination to perform infringing steps.

Monolithic's reliance on *Dynacore*³ in an effort to keep direct infringement by others out of this case is misplaced. Unlike in *Dynacore*, the MP1543 is *incapable* of any non-infringing use—*i.e.*, when assembled and used as intended infringement necessarily results. Monolithic's unsupported assertion that the MP1543 may be used as an LED driver does not alter that state of affairs. Indeed, at his deposition, REDACTED

²

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Parrett Decl., Ex. F, Chen Dep. at 28:19-29:1 and 29:5-7. Dr. Chen further confirmed that REDACTED *See id.* at 40:9-41:5. REDACTED
REDACTED *See id.* at 29:12-15.

³ *Dynacore Holdings Corp. v. U.S. Philips Corp.*, 363 F.3d 1263, 1275 (Fed. Cir. 2004).

REDACTED

See Parrett Decl., Ex. F, Chen Dep. at 38:12-39:1. And Monolithic has not produced a single TYPICAL APPLICATION diagram showing the MP1543 configured other than as a voltage regulator.

The circumstantial evidence of direct infringement by others is thus compelling.⁴ *See Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, No. 00-1172, 2001 U.S. App. LEXIS 233, at *13 (Fed. Cir. Jan. 8, 2001) (“Proof of inducing infringement or direct infringement may be shown by circumstantial evidence.”); *see also Pickholtz v. Rainbow Techs., Inc.*, 260 F. Supp. 2d 980, 988 (D. Cal. 2003) (circumstantial evidence may be used to prove contributory infringement). Moreover, circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence. *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1272 (Fed. Cir. 1986); *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1365 (Fed. Cir. 2004) (same).

II. CONCLUSION

For all the foregoing reasons, this Court should deny Monolithic’s motion *in limine* no. 4.

⁴ *See Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1325 (Fed. Cir. 2004) (considering datasheets evidence of infringement); *VLT Corp. v. Unitrode Corp.*, 130 F. Supp. 2d 178, 200 (D. Mass. 2001) (datasheets are circumstantial evidence that “would support a reasonable inference that [defendant] actively induced infringement”).

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 8, 2008, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

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I also certify that copies were caused to be served on May 8, 2008 upon the following in the manner indicated:

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